



# PUBLIC NOTICE

Federal Communications Commission  
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Washington, D.C. 20554

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DA 23-321  
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## DOMESTIC SECTION 214 APPLICATION GRANTED FOR THE TRANSFER OF CONTROL OF FIBERLIGHT, LLC TO FIBER BIDCO, LLC

### WC Docket No. 22-256

By this Public Notice, the Wireline Competition Bureau (Bureau) grants an application filed by Thermo Acquisitions, Inc. (Thermo), FiberLight, LLC (FiberLight or Licensee), and Fiber BidCo LLC (Fiber BidCo) (collectively, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,<sup>1</sup> requesting consent to transfer ownership and control of FiberLight to Fiber BidCo (the Transaction).<sup>2</sup>

On October 21, 2022, the Bureau released a Public Notice seeking comment on the Application.<sup>3</sup> The Bureau did not receive comments or petitions in opposition to the Application.

### Applicants and Description of the Transaction

<sup>1</sup> 47 U.S.C. § 214; 47 CFR §§ 63.03-04.

<sup>2</sup> See Application of Thermo Acquisitions, Inc., FiberLight, LLC, and Fiber BidCo LLC for Grant of Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, and Sections 63.04 and 63.24 of the Commission's Rules, WC Docket No. 22-256 (filed July 5, 2022) (Application). On August 4, 2022, October 6, 2022, January 23, 2023, and March 21, 2023, Applicants filed supplements to the Application providing, among other things, corrections and updates to Exhibits A and B of the Application related to the ownership interests of upstream entities related to Fiber BidCo. Letter from James C. Falvey, Counsel to Thermo Acquisitions, Inc. and FiberLight, LLC, and Andrew D. Lipman, Counsel to Fiber BidCo LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-256 (filed Aug. 4, 2022) (August Supplement); Letter from James C. Falvey, Counsel to Thermo Acquisitions, Inc. and FiberLight, LLC, and Andrew D. Lipman, Counsel to Fiber BidCo LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-256 (filed Oct. 6, 2022); Letter from James C. Falvey, Counsel to Thermo Acquisitions, Inc. and FiberLight, LLC, and Andrew D. Lipman, Counsel to Fiber BidCo LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-256 (filed Jan. 23, 2023) (disclosing new entities which may, post-transaction, be attributed indirect non-controlling interests in FiberLight and Fiber BidCo); Letter from James C. Falvey, Counsel to Thermo Acquisitions, Inc. and FiberLight, LLC, and Andrew D. Lipman, Counsel to Fiber BidCo LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-256 (filed Mar. 21, 2023) (March Supplement) (providing final amended Exhibits A and B to the Application). Applicants also filed applications for the transfer of an authorization associated with international services, ITC-T/C-20220705-00080, and wireless services, as well as a petition for declaratory ruling asking the Commission to find that it would serve the public interest to permit foreign ownership of the controlling U.S. parent, Fiber BidCo, to exceed the 25% benchmarks in section 310(b)(4) of the Act, 47 U.S.C. § 310(b)(4). Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

<sup>3</sup> See *Domestic Section 214 Application Filed for the Transfer of Control of FiberLight, LLC to Fiber BidCo, LLC*, WC Docket No. 22-256, Public Notice, DA 22-1115 (WCB Oct. 21, 2022) (*Public Notice*).

FiberLight, a Delaware limited liability company and indirect subsidiary of Thermo, a Delaware corporation, constructs and operates fiber optic networks and is authorized to provide competitive local exchange carrier, competitive access, private line, and/or interexchange telecommunications services in Alabama, Florida, Georgia, Louisiana, Maryland, Mississippi, New Mexico, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Washington DC, and West Virginia.<sup>4</sup> FiberLight is an eligible telecommunications carrier (ETC) in Georgia.<sup>5</sup> FiberLight's affiliate, FiberLight of Virginia, LLC (FiberLight-VA), a Virginia limited liability company, provides competitive intrastate telecommunications services in Virginia and is an ETC in Virginia.<sup>6</sup> On July 14, 2022, the Bureau authorized FiberLight and FiberLight-VA to receive Rural Digital Opportunity Fund (RDOF) Auction 904 support to provide service to locations in Georgia and Virginia.<sup>7</sup> FiberLight is directly owned (99.998%) by FiberLight Holdings II, LLC (FH II),<sup>8</sup> which, in turn, is directly wholly-owned by FiberLight Holdings I, LLC (FH I), both Colorado limited liability companies.<sup>9</sup> Thermo directly owns (over 95%) of FH I.<sup>10</sup>

Fiber BidCo, a Delaware limited liability holding company, was created for the purposes of the Transaction and does not itself provide telecommunications services.<sup>11</sup> Fiber BidCo is indirectly wholly-owned by Fiber HoldCo L.P. (Fiber LP).<sup>12</sup> Fiber LP is controlled by its general partner, Fiber GP LLC (Fiber GP), a Delaware limited liability company. Upon completion of the Transaction, Fiber GP, will be owned by: (1) Fiber MCO L.P. (MCO LP), a Delaware limited partnership (50%), (2) Sunsuper Pooled Superannuation Trust (PST), an Australian entity (25%), and (3) GVC Lumens Holdings, Inc. (GVC Holdings), a Delaware limited liability company (25%). These entities also hold the equity interests in Fiber LP: (1) MCO LP (49.5%), (2) PST (24.5%), and (3) GVC Holdings (24.5%); a limited partnership comprised of FiberLight management will hold the other 2% equity interest. MCO LP is owned by The Morrison & Co Infrastructure Partnership Master Fund SCSp (MCO IP), a Luxembourg special limited partnership, registered with the Luxembourg Trade and Companies Register. PST is owned by Australian Retirement Trust (ART) and Australian Retirement Trust Pty Ltd (ART Trustee), which serves as the trustee for PST and ART. GVC Holding is owned by Golden VinzClortho, LLC (GVC), a Delaware

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<sup>4</sup> Application at 3 and 11.

<sup>5</sup> *Id.* at 12.

<sup>6</sup> *Id.*

<sup>7</sup> *Rural Digital Opportunity Fund Support Authorized for 1,605 Winning Bids*, AU Docket No. 20-34 et al., Public Notice, DA 22-759, at 8 and Attach. A (Authorized Long-Form Applicants and Winning Bids) (WCB July 14, 2022) (stating that eligible telecommunication carriers “seeking to transfer control of their domestic authorizations to operate pursuant to section 214 of the Communications Act of 1934, as amended, or to engage in the sale of assets under section 214 must first receive approval from the Commission in accordance with sections 63.03 and 63.04 of the Commission’s rules governing the procedures for domestic transfer of control/asset applications”) (*Eleventh RDOF Authorization Public Notice*). The Commission authorized FiberLight to receive \$458,892.20 for 687 estimated locations in Georgia and FiberLight-VA to receive \$1,067,075.80 for 3,038 estimated locations in Virginia over a 10-year period. *See id.* at Attach. A.

<sup>8</sup> Application at 4. Michael Miller, a U.S. citizen, holds the other .002% of FiberLight. *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* The remainder of FH I is held by FiberLight executives, Christopher Rabii, Ronald Kormos, and Jon Couch. *Id.* Thermo, along with other parent entities, hold a 10% or greater ownership in Globalstar, Inc. (Globalstar), a provider of global mobile satellite voice and data services. *Id.*

<sup>11</sup> *Id.* at 1. Fiber BidCo is affiliated with OpenFiber Kentucky Company, LLC d/b/a Accelecom, a provider of enterprise and wholesale communications services in Kentucky, and is authorized to provide intrastate telecommunications services in Ohio. *Id.* at 13.

<sup>12</sup> *Id.* at 2.

limited liability company.<sup>13</sup> The board of Fiber GP will be comprised of up to eight directors chosen by MCO IP, ART, and GVC as determined by their respective equity interests (i.e., 4 chosen by MCO IP, 2 chosen by ART, and 2 chosen by GVC).<sup>14</sup> Applicants state that, post-transaction, and other than what is described in the Application, no person or entity holding a 10% or greater interest in Fiber BidCo will hold a 10% or greater interest in any other provider of domestic telecommunications services.<sup>15</sup>

Pursuant to terms of the Transaction, Applicants will engage in a series of transactions that will result in Fiber BidCo LLC acquiring indirect ownership and control of FiberLight.<sup>16</sup> As a result, Fiber BidCo LLC will indirectly own all the equity in FH I and, in turn, all the equity in FH II and FiberLight, LLC.<sup>17</sup>

## **Discussion**

We find, upon consideration of the record, that a grant of the Application will serve the public interest, convenience, and necessity. To make this determination under Commission precedent, we consider whether the Transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.<sup>18</sup> We then employ a balancing test weighing any potential public interest harms of the Transaction against any potential public interest benefits.<sup>19</sup> The Applicants bear the burden of proving, by a preponderance of the evidence, that the Transaction, on balance, serves the public interest.<sup>20</sup>

We find that there are no potential public interest harms identified in the record. First, the Transaction will not result in a significant reduction of competition. Although Fiber BidCo is affiliated with OpenFiber Kentucky Company, LLC d/b/a Accelecom, a provider of enterprise and wholesale communications services in Kentucky,<sup>21</sup> there will be no physical overlap or reduction in service providers in any markets as a result of the Transaction.<sup>22</sup> Further, because the Transaction is occurring at

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<sup>13</sup> March Supplement, Amended Exh. B at paras. 8-11.

<sup>14</sup> Application at 2.

<sup>15</sup> *Id.* at 13.

<sup>16</sup> *Id.* at 4-5.

<sup>17</sup> *Id.*

<sup>18</sup> See, e.g., *Application of Verizon Communications Inc. and América Móvil S.A.B. de C.V. for Consent to Transfer Control of International Section 214 Authorization*, GN Docket No. 21-112, IBFS File No. ITC-T/C-20200930-00173, Memorandum Opinion and Order, FCC 21-121, at 8, para. 21 (Nov. 22, 2021) (*Verizon-TracFone Order*) (citing *China Mobile International (USA) Inc., Application for Global Facilities-Based and Global Resale International Telecommunications Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended*, ITC-214-20110901-00289, Memorandum Opinion and Order, 34 FCC Rcd 3361, 3366, para. 9 (2019); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation (and Subsidiaries, Debtors-in-Possession), Assignors, to Time Warner Cable Inc. (Subsidiaries), Assignees; Adelphia Communications Corporation, (and Subsidiaries, Debtors-in-Possession), Assignors and Transferors et al.*, MB Docket No. 05-192, Memorandum Opinion and Order, 21 FCC Rcd 8203, 8219-21, paras. 27-28 (2006) (*Adelphia-TWC Order*)).

<sup>19</sup> See *Verizon-TracFone Order* at 8, para. 21 (citing *Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-90, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9140, para. 18 (2015) (*AT&T-DIRECTV Order*)) (further citations omitted).

<sup>20</sup> See *Verizon-TracFone Order* at 8, para. 21 (citing *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 18; *Adelphia-TWC Order*, 21 FCC Rcd at 8217, para. 23; *Application of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp., Transferors, and EchoStar Communications Corp., Transferee*, CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 25 (2002)) (further citations omitted).

<sup>21</sup> Application at 13.

the holding company level, it will have no impact on Licensee's day-to-day operations and service offerings.<sup>23</sup> Applicants state further that Licensee will "continue to offer its existing services with no change in the rates, terms, and conditions"<sup>24</sup> and, thus, we expect no potential harm to existing customers to result from the Transaction.

Second, Licensee remain financially, managerially, and technically obligated to meet all public interest and performance obligations associated with the receipt of RDOF funding in accordance with the Commission's pre-transaction approval of its qualifications, and we expect that the Transaction will not negatively impact these obligations. Indeed, Applicants assert that the infusion of capital resulting from the Transaction will better position FiberLight or FiberLight-VA to "expand broadband infrastructure and other services to meet the demands of consumers,"<sup>25</sup> and, with regard to the RDOF program, "will enhance Licensee's and FiberLight-VA's managerial, technical, and financial capabilities which will enhance their ability to meet their RDOF service obligations."<sup>26</sup> Applicants have confirmed that the Transaction "will not result in an increase in the level of debt, nor will it result in any alteration to the buildout plans submitted to the Commission to qualify for RDOF funding."<sup>27</sup> Applicants have also confirmed that they anticipate that FiberLight's senior management team "will remain in place following the Transaction"<sup>28</sup> and that "Licensee's managerial, technical, and operational standards will be maintained and strengthened by the influx of new investment by Transferee."<sup>29</sup> Overall, we conclude that the record in this proceeding does not support a finding of a public interest harm.

We next consider whether the Transaction is likely to generate verifiable, transaction-specific public interest benefits.<sup>30</sup> Applicants must provide evidence of a claimed benefit to allow the Commission to verify its likelihood and magnitude.<sup>31</sup> Where potential harms appear unlikely, as is the case with the Application before us here, the Commission accepts a lesser degree of magnitude and likelihood than when harms are present.<sup>32</sup>

Applicants claim that the Transaction will provide additional capital and managerial resources that will "strengthen Licensee's financial condition by providing Licensee with access to additional resources through a combination of new equity investment, reinvestment of operating cash flows, and prudent use of third-party debt financing that will support the buildout, operation, and maintenance of its fiber network, and enable Licensee to operate more efficiently and effectively."<sup>33</sup> Further, Applicants assert that "[w]ith Licensee's management experience coupled with the experience and financial backing of Transferee, Licensee will continue to build, operate, and maintain state-of-the-art communications networks which can be leveraged by Licensee and its wholesale customers to expand broadband infrastructure and other services to meet the demands of consumers."<sup>34</sup> The Commission has specified

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 7.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 12.

<sup>27</sup> Application at 12-13; August Supplement at 1-2.

<sup>28</sup> Application at 6.

<sup>29</sup> *Id.* at 7.

<sup>30</sup> See *AT&T/DIRECTV Order*, 30 FCC Rcd at 9237, paras. 273-74.

<sup>31</sup> See *id.* at 9237-38, paras. 275-76.

<sup>32</sup> See *id.*

<sup>33</sup> Application at 6.

<sup>34</sup> *Id.* at 6-7.

that ensuring consumers receive new or additional services is an important public interest factor,<sup>35</sup> and accelerating private sector deployment of advanced services is one of the aims of the Communications Act.<sup>36</sup> In light of the Applicants' commitments to meet all of Licensee's federal high-cost funding obligations<sup>37</sup> and the fact that Applicants are prepared to devote additional capital to accelerate facilities-based service offerings,<sup>38</sup> we find it likely that the Transaction would result in some public interest benefits. Absent any potential harms, and considering that the Transaction is likely to yield some benefits, we find, on balance, that the Transaction serves the public interest.

### **National Security, Law Enforcement, Foreign Policy, and Trade Policy Concerns**

When analyzing a transfer of control or assignment application that includes foreign investment, we also consider public interest issues related to national security, law enforcement, foreign policy, or trade policy concerns.<sup>39</sup> As part of the public interest analysis, the Commission coordinates with the relevant Executive Branch agencies that have expertise in these particular issues.<sup>40</sup> The Commission accords deference to the expertise of these Executive Branch agencies in identifying issues related to national security, law enforcement, foreign policy, or trade policy concerns raised by the relevant Executive Branch agencies.<sup>41</sup> The Commission, however, ultimately makes an independent decision on the application based on the record in the proceedings.<sup>42</sup>

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<sup>35</sup> See, e.g., *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 19.

<sup>36</sup> See *Verizon-TracFone Order* at 9, para. 22; see also 47 U.S.C. §§ 254, 332(c)(7), 1302; Telecommunications Act of 1996, Pub. L. No. 104-104, Preamble, 110 Stat. 56 (1996) (one purpose of the Act is to “accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services”).

<sup>37</sup> Application at 2, 11-12.

<sup>38</sup> *Id.* at 6, 8, 12.

<sup>39</sup> See *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket 16-155, Report and Order, 35 FCC Rcd 10927 (2020) (setting rules and procedures for referring applications for Executive Branch review consistent with Executive Order No. 13913) (*Executive Branch Review Order*); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97-142 & 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-21, paras. 59-66 (1997) (*Foreign Participation Order*), *recon. denied*, 15 FCC Rcd 18158 (2000) (in opening the U.S. telecommunications market to foreign entry in 1997, the Commission affirmed that it would consider national security, law enforcement, foreign policy, and trade policy concerns related to reportable foreign ownership as part of its overall public interest review of application for international section 214 authority, submarine cable landing licenses, and declaratory rulings to exceed the foreign ownership benchmarks of section 310(b) of the Act); see also *Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations, et al.*, WT Docket 18-197, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578, 10732-33, para. 349 (2019) (*T-Mobile/Sprint Order*).

<sup>40</sup> See *Executive Branch Review Order*, 35 FCC Rcd at 10935-36, paras. 17, 24.

<sup>41</sup> *Id.* at 10930, para. 7 (citing *Foreign Participation Order*, 12 FCC Rcd at 23920-21, paras. 65-66; *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States; Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations*, IB Docket No. 96-111, CC Docket No 93-23, RM-7931, Report and Order, 12 FCC Rcd 24094, 24171-72, paras. 179, 182 (1997)); see also *T-Mobile/Sprint Order*, 34 FCC Rcd at 10733, paras. 349; *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, GN Docket No. 15-236, Report and Order, 31 FCC Rcd 11271, 11277, para. 6 (2016), *pet. for recon. dismissed*, 32 FCC Rcd 4780 (2017).

<sup>42</sup> 47 CFR § 1.40001(b) (“The Commission will consider any recommendations from the [E]xecutive [B]ranch on pending application(s) . . . that may affect national security, law enforcement, foreign policy, and/or trade policy as

Pursuant to Commission practice, the Application, the international transfer of control application (ITC-T/C-20220705-00080), and the associated petition for declaratory ruling (ISP-PDR-20220705-00005) (collectively, Applications/Petition), were referred to the relevant Executive Branch agencies for their review of any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of the Applicants.<sup>43</sup> On October 28, 2022, the U.S. Department of Justice (DOJ), on behalf of the Committee, filed a notification with the Commission that the Committee was reviewing the Applications/Petition for any national security and law enforcement concerns that may be raised by foreign participation in the United States telecommunications services sector and requested that the Commission defer action on the Applications/Petition.<sup>44</sup> We deferred action in response to this request from the Committee. On December 15, 2022, DOJ notified the Commission that the Committee was “conducting [a 120-day] initial review to assess whether granting the Applications will pose a risk to national security or law enforcement interests of the United States.”<sup>45</sup>

On March 21, 2023, the National Telecommunications and Information Administration (NTIA) informed the Commission that “the Committee has reviewed the application and has no recommendation at this time to the Commission approving the application and no objection to the Commission granting it” and that the Committee “reserves the right to review any resulting authorization in the future to identify any additional or new risks to U.S. national security or law enforcement interests.”<sup>46</sup>

### **Grant of Application, Subject to Condition**

We find, upon consideration of the record, that the proposed transfer will serve the public interest, convenience, and necessity.<sup>47</sup> This grant of the Application is conditioned as set out in this Public Notice.

Pursuant to section 214 of the Act, 47 U.S.C. § 214, and sections 0.91, 0.291, 63.03, and 63.04 of the Commission’s rules, 47 CFR §§ 0.91, 0.291, 63.03, and 63.04, the Bureau hereby grants the Application discussed in this Public Notice, subject to Applicants’ compliance with all applicable obligations.<sup>48</sup>

Pursuant to section 1.103 of the Commission’s rules, 47 CFR § 1.103, the grant is effective upon release of this Public Notice.<sup>49</sup> Petitions for reconsideration under section 1.106 or applications for

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part of its public interest analysis. The Commission will evaluate concerns raised by the [E]xecutive [B]ranch and will make an independent decision concerning the pending matter.”).

<sup>43</sup> See *Public Notice* at 3.

<sup>44</sup> Letter from David P. Palmer, Department of Justice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-256; ISP-PDR-20220705-00005, ITC-T/C-20220705-00080, and Attach. (filed Oct. 28, 2022).

<sup>45</sup> Letter from David P. Palmer, Department of Justice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-256; ISP-PDR-20220705-00005, ITC-T/C-20220705-00080, and Attach. (filed Dec. 15, 2022).

<sup>46</sup> Letter from Stephanie Weiner, Chief Counsel, National Telecommunications and Information Administration, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-256; ISP-PDR-20220705-00005, ITC-T/C-20220705-00080 (Mar. 21, 2023). On March 14, 2023, DOJ filed a memorandum in the relevant dockets requesting that NTIA, on behalf of the Committee, notify the Commission of the final recommendation on or before March 21, 2023. Memorandum from the U.S. Department of Justice, National Security Division, to the National Telecommunications and Information Administration, U.S. Department of Commerce (Mar. 14, 2023) (on file in WC Docket No. 22-256).

<sup>47</sup> See 47 U.S.C. § 214(a); 47 CFR § 63.03.

<sup>48</sup> See *CAF Phase II Public Notice*, 34 FCC Rcd at 5967-71; *RDOF Public Notice* at 1-9 (listing obligations of authorized support recipients).

<sup>49</sup> We direct Applicants to submit, within 30 days of closing the Transaction, a notice in WC Docket No. 22-256 that the Transaction has closed, with the consummation date, and also provide a courtesy copy of the notice to [hcinfo@usac.org](mailto:hcinfo@usac.org).

review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

For further information, please contact Gregory Kwan, Wireline Competition Bureau, Competition Policy Division, (202) 418-1191.

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